MOTION FILED FEB 2 1952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 501

HOSKINS COAL AND DOCK CORPORATION,
Petitioner,

VS.

TRUAX TRAER COAL COMPANY and UNITED ELECTRIC COAL COMPANIES,
Respondents.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

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FRANCIS HEISLER
DAVID J. SHIPMAN
EUGENE H. DUPEE, JR.
JOHN F. SULLIVAN
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As Amici Curiae

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA KEVIEW 5-6581

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kins Coal and Dock Corporation for a Writ of Certiorari in this case. The consent of the attorneys for Petitioner herein to the filing of this brief is annexed hereto. The consent of attorneys for the respondents was requested but was refused. The interest of the movants and their reasons for asking for leave to file a brief as *amici curiae* are set forth below.

(1) Each of the movants are practicing attorneys at law maintaining offices in the places designated below their respective names at the foot of this motion and each of them are attorneys for plaintiffs in one or more suits now pending in various District Courts of the United States seeking recovery of treble damages for violations of the antitrust laws of the United States. Between them, they are currently engaged in the prosecution of more than twenty such suits.

(2) The decision of the United States Court of Appeals for the Seventh Circuit in *Hoskins Coal and Dock Corporation* v. *Truax Traer Coal Company,* reported in 191 Fed. 2d 912 (CA-7) holds that the statute of limitations applicable to a suit under Section 4 of the Clayton Act arising in the State of Illinois is the two year period prescribed by Ill. Rev. Stat. Chap. 83, Sec. 15. This section provides:

> "15. Personal injuries, penalties, etc.] Actions for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation, shall be commenced within two years next after the cause of action accrued."

The Court of Appeals, in order to hold the foregoing provision applicable, determined that an action under Section 4 of the Clayton Act is an action that is essentially penal in nature and character.

(3) If it is proper to apply to an action under Section 4 of the Clayton Act a state statute of limintations governing actions of a penal nature, which in most states is a one or two year period, then the interests of movants and of their respective clients as plaintiffs in antitrust suits, as well as the interests of all persons similarly situated throughout the country, is seriously affected. A number of suits pending in the United States District Court for the Northern District of Illinois are already barred, since the acts complained of occurred more than two years prior to the filing of suit and in the remainder of the suits pending in that court, plaintiffs will now be cofined to recovery of damages sustained in the two year period preceding institution of the action. Comparable curtailment will also take place in every jurisdiction that limits suits for statutory penalties to periods of less than five years.

(4) In several of these pending cases there is a question of whether the action may be assigned or whether it survives the death of the aggreived party. In view of the weight of authority that penal actions may not be assigned and do not survive, if the decision of the Court of Appeals and its rationale are permitted to stand, many such cases will be defeated for lack of proper parties.

(5) Movants urge that the Petition for a Writ of Certiorari sets forth sufficient reasons for the Court to review the decision of the Court of Appeals and to reverse it, but in addition to these reasons, and in amplification of some of them, movants seek leave to file the attached brief which invites the Court's attention to the following points:

A. In the absence of a federal statute of limitations, no statute of limitations may be properly applied to a cause of action created by federal law.

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B. This Court has conclusively determined in a prior case, as disclosed by an examination of that case in the trial court, the Court of Appeals and in this Court, that private actions for damages under the antitrust laws are not penal in nature. This being true, regardless of what kind of unique interpretation a state court may place upon its local limitations provision purporting to cover actions for statutory penalties, such a provision may be applied to a cause of action under the antitrust laws.

C. Several Courts of Appeals and numerous District Courts have reached decisions that are in conflict with the decision of the Court below and which were, until that decision, regarded as establishing the doctrine that actions under the federal antitrust laws are not penal in nature.

D. The public interest in enforcement of the antitrust laws and in uniformity and certainty of their application will be seriously affected if the decision of the Court of Appeals is permitted to stand.

E. This Court should review a procedure whereby a Court of Appeals has made use of the state court decisions in such a way that it has abdicated to a state court its exclusive responsibility to determine the character and nature of a federally created right.

It is respectfully suggested that this Court should exercise its supervisory powers to reverse a decision that is in conflict with a decision of this Court and with decisions of other Courts of Appeals and which cuts into established doctrine that has been everywhere relied upon for many years, particularly where no reasons of public policy justify the decision and where numerous reasons require its reversal.

Wherefore, movants pray for leave to file the annexed brief in support of the Petition of Hoskins Coal and Dock Corporation for a Writ of Certiorari in the above-entitled cause.

Respectfully submitted,

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As Amici Curiae.

Petitioner hereby consents to the filing of the annexed brief in support of its Petition for a Writ of Certiorari in the above entitled cause.

HOSKINS COAL AND DOCK CORPORATION,
Petitioner,

By: .....

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